



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D.C. 20535

July 29, 2013

Honorable Rand Paul, M.D.  
United States Senate  
Washington, D.C. 20510

Dear Senator Paul:

This responds to your follow-up letter to the Federal Bureau of Investigation (FBI) dated July 25, 2013, requesting additional information regarding the FBI's definition of a reasonable expectation of privacy, particularly as it relates to Unmanned Aerial Vehicles (UAVs). This letter supplements our July 19, 2013 response to your earlier inquiry about the FBI's use of UAVs.

As noted in our July 19th response, the FBI uses UAVs in very limited circumstances to conduct surveillance when there is a specific, operational need. Since 2006, the FBI has only used UAVs in 10 cases for surveillance to support missions related to kidnappings; search and rescue operations, drug interdictions, and fugitive investigations, including earlier this year in Alabama in the successful rescue of a 5-year-old child being held hostage in an underground bunker by Jimmy Lee Dykes. Further, the FBI does not, and has no plans to use UAVs to conduct general surveillance not related to a specific investigation or assessment. In addition, all proposals for the use of UAVs are (1) reviewed by legal counsel to ensure their use does not infringe on a person's reasonable expectation of privacy under the Fourth Amendment; (2) authorized by the Federal Aviation Administration (FAA) under its rules; and (3) operated consistent with the FBI's policies and procedures.

All FBI agents are trained on the Supreme Court's interpretations of a reasonable expectation of privacy under the Fourth Amendment, and on the circumstances where the FBI would be required to seek a warrant during an investigation. These principles apply to all of our investigations and any collection of information, regardless of the technical platform. Moreover, these principles are set forth in several sections of the FBI's Domestic Intelligence and Operations Guide ("DIOG"), which are used for training and apply to all FBI agents. *See, e.g.,* DIOG §§ 18.5.8., 18.6.12, 18.7.1. Any investigation using UAVs must comply with the Fourth Amendment and the DIOG, which includes the definition of a reasonable expectation of privacy provided by the Supreme Court.

While there are no reported cases specifically involving UAVs, the Supreme Court has analyzed the Fourth Amendment implications of manned aerial surveillance in three cases: *California v. Ciraolo*, 476 U.S. 207 (1986), *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986), and *Florida v. Riley*, 488 U.S. 445 (1989). In these three cases, the Court held that

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aerial surveillance was not a search under the Fourth Amendment requiring a warrant because the areas observed were open to public view and, as a matter of law, there was no reasonable expectation of privacy. The Fourth Amendment principles applicable to manned aerial surveillance discussed in these cases apply equally to UAVs. Also, in *United States v. Jones*, 132 S. Ct. 945 (2012), the Supreme Court added an additional factor to consider when determining whether a search implicates the Fourth Amendment: whether the Government will obtain information by physically intruding on a protected property interest. With respect to UAVs, there is no physical trespass involved in their use, and a warrant would not be required under this standard. The concurring opinions in *Jones* suggests that long-term warrantless surveillance of a person, while the person is in public, may constitute a search under the Fourth Amendment, even without a trespass. We do not use UAVs to undertake such surveillance. However, the FBI remains cognizant of potential post-*Jones* concerns about using UAVs to conduct long-term surveillance, and all uses of UAVs by the FBI are reviewed to be consistent with the Supreme Court's *Jones* decision.

We hope this additional information is helpful. If you have any additional questions concerning this or other matters, please contact the Office of Congressional Affairs at (202) 324-5051.

Sincerely,



Stephen D. Kelly  
Assistant Director  
Office of Congressional Affairs

DRAFT

July 18, 2013

The Honorable Rand Paul, M.D.  
United States Senate  
Washington, D.C. 20510

Dear Senator Paul:

This is in response to your letters to the Federal Bureau of Investigation dated June 20 and July 9, 2013, seeking information concerning the FBI's use of unmanned aerial vehicles (UAVs) for surveillance purposes.

The FBI uses UAVs in very limited circumstances to conduct surveillance when there is a specific, operational need. UAVs have been used for surveillance to support missions related to kidnappings, search and rescue operations, drug interdictions, and fugitive investigations. Since late 2006, the FBI has conducted surveillance using UAVs in eight criminal cases and two national security cases.<sup>1</sup> For example, earlier this year in Alabama, the FBI used UAV surveillance to support the successful rescue of the 5-year-old child who was being held hostage in an underground bunker by Jimmy Lee Dykes. None of the UAVs used by the FBI are armed with either lethal or non-lethal weapons, and the FBI has no plans to use weapons with UAVs. The FBI does not use UAVs to conduct "bulk" surveillance or to conduct general surveillance not related to an investigation or assessment.

The FBI only conducts UAV surveillance consistent with our rules and regulation for conducting aerial surveillance in our investigations, as well as specific rules and regulations applicable to the use of UAVs for surveillance. Specifically, the FBI's use of UAVs for surveillance is governed by laws and policies including the Fourth Amendment of the United States Constitution, the Privacy Act, Federal Aviation Administration (FAA) rules and regulations, the Attorney General Guidelines for Domestic FBI Operations, the FBI's Domestic Investigations and Operations Guide (DIOG), and the FBI's 2011 Bureau Aviation Regulations Manual, which has specific policies for the use of UAVs for aerial surveillance. For example, the FBI must obtain a Certificate of Authorization from the FAA prior to using UAVs for surveillance, and comply with the FAA's guidelines on the use of UAVs in the national airspace (this includes significant limits on the area and altitude where UAVs can be operated). *See* FAA Interim Operational Approval Guidance, UAS Policy 05-01, "Unmanned Aircraft Systems: Operations in the U.S. National Airspace System" (2008).

In addition, every request to use UAVs for surveillance is reviewed by FBI legal counsel to ensure there are not potential Fourth Amendment or privacy concerns implicated by the proposed use of UAVs. Every request to use UAVs for surveillance must be approved by senior FBI management at FBI Headquarters and in the relevant FBI Field Office. Without a warrant, the FBI will not use UAVs to acquire information in which individuals have a reasonable expectation of privacy under the Fourth Amendment, such as information about the interior of a home. To date, there has been no need for the FBI to seek a search warrant or judicial order in any of the few cases where UAVs have been used.

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<sup>1</sup> The FBI authorized UAVs for surveillance in three other criminal cases, but they were not actually used.

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While we share your interest in transparency concerning the use of law enforcement and national security tools, we are not in a position to disclose publicly more detailed information concerning the Bureau's specific use of UAVs. Such additional information is "Law Enforcement Sensitive" or, in some cases, classified, based on the need to protect the effectiveness of this capability in law enforcement and national security matters. We have enclosed a classified addendum that provides more detailed information in response to your inquiry. We request that you not disseminate the information in the addendum without prior consultation with the FBI.

We appreciate your interest in this issue and trust this information is responsive to your inquiry. If you have additional questions concerning this or other matters, please contact the Office of Congressional Affairs at 202-324-5051.

Sincerely,

Stephen D. Kelly  
Assistant Director  
Office of Congressional Affairs

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Enclosure

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CREW-3500



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D.C. 20535

July 19, 2013

Honorable Zoe Lofgren  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Honorable Ted Poe  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Representatives Lofgren and Poe:

This is in response to your letter to the FBI dated July 1, 2013, seeking information concerning the FBI's use of unmanned aerial vehicles (UAVs) for surveillance purposes.

The FBI uses UAVs in very limited circumstances to conduct surveillance when there is a specific, operational need. UAVs have been used for surveillance to support missions related to kidnappings, search and rescue operations, drug interdictions, and fugitive investigations. Since late 2006, the FBI has conducted surveillance using UAVs in eight criminal cases and two national security cases.<sup>1</sup> For example, earlier this year in Alabama, the FBI used UAV surveillance to support the successful rescue of the 5-year-old child who was being held hostage in an underground bunker by Jimmy Lee Dykes. None of the UAVs used by the FBI are armed with either lethal or non-lethal weapons, and the FBI has no plans to use weapons with UAVs. The FBI does not use UAVs to conduct "bulk" surveillance or to conduct general surveillance not related to an investigation or assessment.

The FBI only conducts UAV surveillance consistent with our rules and regulation for conducting aerial surveillance in our investigations, as well as specific rules and regulations applicable to the use of UAVs for surveillance. Specifically, the FBI's use of UAVs for surveillance is governed by laws and policies including the Fourth Amendment of the United States Constitution, the Privacy Act, Federal Aviation Administration (FAA) rules and regulations, the Attorney General Guidelines for Domestic FBI Operations, the FBI's Domestic Investigations and Operations Guide (DIOG), and the FBI's 2011 Bureau Aviation Regulations Manual, which has specific policies for the use

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<sup>1</sup> The FBI authorized UAVs for surveillance in three other criminal cases, but they were not actually used.

Honorable Joe Lofgren and Honorable Ted Poe


of UAVs for aerial surveillance. For example, the FBI must obtain a Certificate of Authorization from the FAA prior to using UAVs for surveillance, and comply with the FAA's guidelines on the use of UAVs in the national airspace (this includes significant limits on the area and altitude where UAVs can be operated). *See* FAA Interim Operational Approval Guidance, UAS Policy 05-01, "Unmanned Aircraft Systems: Operations in the U.S. National Airspace System" (2008).

In addition, every request to use UAVs for surveillance is reviewed by FBI legal counsel to ensure there are not potential Fourth Amendment or privacy concerns implicated by the proposed use of UAVs. Every request to use UAVs for surveillance must be approved by senior FBI management at FBI Headquarters and in the relevant FBI Field Office. Without a warrant, the FBI will not use UAVs to acquire information in which individuals have a reasonable expectation of privacy under the Fourth Amendment. To date, there has been no need for the FBI to seek a search warrant or judicial order in any of the few cases where UAVs have been used.

While we share your interest in transparency concerning the use of law enforcement and national security tools, we are not in a position to disclose publicly more detailed information concerning the Bureau's specific use of UAVs. Such additional information is "Law Enforcement Sensitive" or, in some cases, classified, based on the need to protect the effectiveness of this capability in law enforcement and national security matters. We have enclosed a classified addendum that provides more detailed information in response to your inquiry. We request that you not disseminate the information in the addendum without prior consultation with the FBI.

We appreciate your interest in this issue and trust this information is responsive to your inquiry. If you have additional questions concerning this or other matters, please contact the Office of Congressional Affairs at (202) 324-5051.

Sincerely,



Stephen D. Kelly  
Assistant Director  
Office of Congressional Affairs

Enclosure



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Federal Bureau of Investigation

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Washington, D.C. 20535

July 19, 2013

Honorable Rand Paul, M.D.  
United States Senate  
Washington, DC 20510

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Sincerely,



Stephen D. Kelly  
Assistant Director  
Office of Congressional Affairs

Enclosure



DRAFT

[Date]

The Honorable Zoe Lofgren  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Ted Poe  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

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Sincerely,

Stephen D. Kelly  
Assistant Director  
Office of Congressional Affairs

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